

**Notice of Allowability**

Application No.

09/825,989

Applicant(s)

FAHEY ET AL.

Examiner

Frederick Krass

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment dated 03/03/07.
2. ☒ The allowed claim(s) is/are 48-51, 53-63 and 65-75.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other Drawings (04/05/01) accepted.

Frederick Krass  
Primary Examiner  
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**Examiner's Amendment**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The following changes have been made:

As the first line of the specification there has been inserted:

--- This application is a divisional of USSN 09/425,890, filed 10/25/1999 and now USP 6,242,018, which is a divisional of USSN 09/118,867, filed 07/20/1998 and now USP 6,177,122, which is a divisional of USSN 08/840,234, filed 04/11/1997 and now USP 5,968,567. ----

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**Reasons for Allowance**

The following is an examiner's statement of reasons for allowance:

Previously cited prior art

As previously argued by applicant, the prior art of record actually teaches away from the instantly claimed methods for making foods. Specifically, Jones et al (USP 4,158,656) notes at column 3, lines 48-53 that glucosinolates and isothiocyanates should be removed prior to producing any food products. Anjou et al (USP 4,083,836) discloses substantially the same.

Furthermore, the prior art of record also teaches away from harvesting vegetables up to and including the 2-leaf stage. See for instance Pusateri et al (USP 5,686,108) at column 2, lines 48-51, which notes that mature broccoli florets are preferable to other parts of the plant because of their higher nitrile content. Accordingly, no issue of obviousness-type double patenting is seen with regard to claims relating to methods of making food products in the which the selection of same is required (e.g., USP 5,698,567 and USP 5,725,895).

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Newly cited prior art

The examiner additionally cites Omary et al (USP 6,436,450) as teaching away from the instantly claimed extraction methods (claims 48 et seq.). Specifically, the prior art teaches at column 2, lines 47-52 that plant tissues containing glucosinolates and isothiocyanates should not be subjected to temperatures which would inactivate myrosinase (exactly the opposite of applicant's claimed method).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

**Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick Krass whose telephone number is (571) 272-0580. The examiner can normally be reached at (571) 272-0580 on Monday through Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached at (571) 272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frederick Krass  
Primary Examiner  
Art Unit 1614

